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Attorneys for Defendant, STATE OF CALIFORNIA
acting by and through the DEPARTMENT OF TRANSPORTATION;
DALE BONNER, WILL KEMPTON and PEDRO ORSO-DELGADO

UNITED STATES DISTRICT COURT

Southern District of California

SAN DIEGO MINUTEMEN, An Unincorporated Association,) Case No.: 08 CV 0210 WQH RBB

Plaintiff,

VS.

CALIFORNIA BUSINESS TRANSPORTATION)
AND HOUSING AGENCY'S DEPARTMENT)
FEDERAL RULE OF CIVIL
PROCEDURE 12(b)(1); (2); and (6)

OF TRANSPORTATION; DALE BONNER,)
Individually and in his Official Capacity as) *No oral argument unless requested by the*
Agency Director, Business Transportation and) *Court*

Agency Director, Business, Transportation and Housing Agency; WILL KEMPTON, Individually and in his Official Capacity as Caltrans Director; PEDRO ORSO-DELGADO, Individually and in his Official Capacity as Caltrans District Director and DOES 1 through 10,)	Court	
)	Date:	April 1, 2008
)	Time:	11:00 a.m.
)	Courtroom:	4
)	Judge:	William O. Hayes

Defendant

To Plaintiff and its attorneys of record:

Please take notice that on April 1, 2008, at 11:00 a.m., or as soon thereafter as the matter may be heard, before the Honorable William Q. Hayes, sitting in Courtroom 4 of the United States Courthouse, located at 880 Front Street, San Diego, California, Defendant, The People of the State of California, acting by and through the Department of Transportation (erroneously named and served as “California Business Transportation and Housing Agency’s Department of Transportation”) will move for an Order dismissing the Complaint as to the moving party.

/ / /

1 This motion is made pursuant to Fed. R. Civ. Pro., Rule 12, subdivision (b) subsections (1); (2);
2 and (6).

3 Additionally, please take further notice that Defendants, Dale Bonner, Will Kempton and
4 Pedro Orso-Delgado, move this Court pursuant to Fed. R. Civ. Pro., Rule 12, subdivision (b)
5 subsections (1); (2); and (6), for an Order dismissing the Complaint as to the moving parties.

6 Said motion is brought without prejudice to any and all defenses which may be asserted
7 in the event said motion is denied. (Fed. R. Civ. Pro., Rule 12 (a)(4)(A).)

8 Said motion is based upon this Notice, the attached Memorandum of Points and
9 Authorities, documents and papers on file in this action and such further argument and evidence
10 as may be presented at the hearing of this motion.

11 This Motion is made on the following grounds: (1) The Federal Courts are without
12 jurisdiction over the sovereign states of the United States pursuant to the Eleventh Amendment
13 to the United States Constitution; (2) the sovereign States of the United States are not “persons”
14 within the meaning of 42 U.S.C. § 1983 and (3) plaintiff’s Complaint fails to state a claim upon
15 which relief may be granted.

16 Further, Comes now, Defendants, Dale Bonner, Will Kempton and Pedro Orso-Delgado,
17 move this Court pursuant to Fed. R. Civ. Pro., Rule 12, subdivision (b), subsection (6), for an
18 Order dismissing plaintiff’s civil action and all causes of action alleged therein, with prejudice,
19 as to all defendants. This Motion is made on the following grounds: (1) plaintiff’s Complaint is
20 not ripe for judicial determination; and (2) plaintiff’s Complaint fails to state a claim upon which
21 relief may be granted.

22 Wherefore, all defendants pray as follows:

- 23 1. The Complaint and each claim for relief alleged therein be ordered
24 dismissed with prejudice as against the moving defendants;
25 2. Plaintiff take nothing from said moving defendants;

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3. Judgment be entered in favor of said moving defendants; and
4. Defendants be awarded its costs of suit herein pursuant to Fed. R. Civ. Pro., Rule 54(d)(1)

Dated: _____

BRUCE A. BEHRENS, Chief Counsel
JEFFREY R. BENOWITZ, Deputy Chief Counsel

Jeffrey R. Benowitz, Deputy Chief Counsel
Stephanie D. Martin, Deputy Attorney
Attorneys for Defendant State of California